

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHAWN OMAR JACOBS,

Petitioner,

v.

SUPERINTENDENT DELBALSO, et al.,

Respondents.

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CIVIL ACTION NO. 17-569

ORDER

AND NOW, this 7th day of November, 2017, after considering: (1) the petition for a writ of habeas corpus under 28 U.S.C. § 2254 filed by the *pro se* petitioner, Shawn Omar Jacobs (Doc. No. 1); (2) the state court record (Doc. No. 6); (3) the petitioner's April 17, 2017 letter to United States Magistrate Judge Marilyn Heffley (Doc. No. 7); (4) the petitioner's brief supporting a motion to stay and abey a 28 U.S.C. § 2254 petition (Doc. No. 12); (5) the respondents' response to the petitioner's request for a stay in which they indicate that they do not oppose the petitioner's request to stay and abey these habeas proceedings (Doc. No. 13); (6) the petitioner's letter to Judge Heffley, which the clerk of court docketed on July 18, 2017 (Doc. No. 17); (7) the respondents' response to the petition for a writ of habeas corpus (Doc. No. 19); (8) the petitioner's letter to Judge Heffley, which the clerk of court docketed on July 24, 2017 (Doc. No. 20); (9) the petitioner's letter to Judge Heffley, which the clerk of court docketed on August 3, 2017 (Doc. No. 22); (10) the petitioner's brief supporting a motion to stay and abey his 28 U.S.C. § 2254 petition (Doc. No. 23); and (11) the October 17, 2017 report and recommendation

by Judge Heffley (Doc. No. 24); and it appearing that no party has timely filed objections to the report and recommendation;¹ accordingly, it is hereby **ORDERED** as follows:

1. The Honorable Marilyn Heffley's report and recommendation (Doc. No. 24) is **APPROVED** and **ADOPTED**;²

2. This action shall be **STAYED** and **ABEYED** pending the final resolution of the petitioner's current post-conviction relief proceeding in the Pennsylvania courts;

3. The clerk of court shall continue to keep this matter in **CIVIL SUSPENSE** until further order of court; and

4. The petitioner shall notify the court through the filing of an appropriate pleading within thirty (30) days of the decision of the Pennsylvania courts on his current post-conviction relief petition, *i.e.* when the decision on the petition becomes final.

BY THE COURT:

/s/ Edward G. Smith
EDWARD G. SMITH, J.

¹ According to the docket, the clerk of court docketed Judge Heffley's report and recommendation on October 18, 2017, and the parties were served with copies of the report and recommendation on that date. Since the petitioner received service of the report and recommendation by mail, he had until November 6, 2017, to file objections. The respondents, who were served through the electronic filing system, had until November 1, 2017, to file objections.

² Since neither party has filed objections to Judge Heffley's report and recommendation, the court need not review the report before adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). Nonetheless, "the better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report." *Id.* As such, the court will review the report for plain error. *See Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) ("In the absence of a timely objection, . . . this Court will review [the magistrate judge's] Report and Recommendation for clear error." (internal quotation marks omitted)). The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The court has reviewed Judge Heffley's report for plain error and has found none.